

1 gotten carried away.

2 I think the hearing designation order
3 here repeats the -- yes -- well, there's
4 reference anyway in paragraph eight of the
5 hearing designation order.

6 JUDGE SIPPEL: I see that, yes,
7 informally this is based on, Rice's prior
8 convictions, he had sexual assault and sodomy.

9 MR. JACOBS: Sodomy, no problem with
10 that. All I'm saying is, that in some of the
11 opinions in this case the word forcible was added
12 to sodomy. And, it's not here, the Commission is
13 not buying into that, and I'm delighted that the
14 Commission is not, and understanding it should
15 stay that way.

16 JUDGE SIPPEL: Well, we're bound by the
17 hearing designation order to the extent that it's
18 not erroneous, so we can rely on the hearing
19 designation order.

20 Do you buy that, Mr. Schonman?

21 MR. SCHONMAN: Yes, sir.

22 JUDGE SIPPEL: Okay, that's easy then.
23 So, that takes care of that. But, I'm assuming
24 that -- well, before I launch into something else
25 on that, let me just ask the question this way.

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1 And, I'm going to ask it of you first, Mr.
2 Jacobs.

3 Was there -- the way you explain, he
4 was in prison, the statement was being made
5 between his lawyer and Ms. Cox, was that offered
6 at any point in mitigation? I know it's not
7 going to -- it's not going to be a defense to a
8 finding of misrepresentation. But, was it a
9 mitigating factor that was considered by either
10 Judge Steinberg or the Court of Appeals.

11 MR. JACOBS: It was in the record.

12 JUDGE SIPPEL: It was in the record.
13 Okay. We'll go by the record.

14 Mr. Schonman has no problem with that.
15 All right.

16 So, sitting here today, I'd like to
17 give some peace of mind to the Bureau, I have no
18 intention of revisiting what has already been
19 decided, since what's been decided is accurately
20 described in the hearing designation, but I'm not
21 going to go beyond the hearing designation order.

22 And, you will correct me if it creeps
23 up. Is that fair enough?

24 MR. SCHONMAN: Fair enough.

25 JUDGE SIPPEL: Mr. Jacobs?

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1 MR. JACOBS: Fine.

2 JUDGE SIPPEL: You can stipulate to
3 that when you stipulate things, and we'll leave
4 it at that. Okay.

5 Anything else?

6 MR. SCHONMAN: On this matter or
7 generally?

8 JUDGE SIPPEL: No, on anything else we
9 need to talk about. We are finished with this
10 matter.

11 MR. JACOBS: Oh, electronic filing the
12 pleading.

13 JUDGE SIPPEL: Yes.

14 MR. JACOBS: We're fully in agreement
15 on that, and I just would appreciate repetition
16 or clarification of my understanding of what that
17 would mean is that the Bureau and I will exchange
18 all documents electronically. But, we will also
19 mail them to each other, thereby, taking
20 advantage of the three days for mailing. It
21 should only be three days.

22 JUDGE SIPPEL: Yes, they are pretty
23 good about that, except that you've got to go
24 through that Section C now.

25 MR. JACOBS: Well, that is kind of my

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1 third prong in this. I assume that I also need
2 to, or we also need to either hand deliver or
3 file, officially file, in the docket these same
4 documents, original and one.

5 MR. SCHONMAN: Certainly filing is
6 different than serving.

7 JUDGE SIPPEL: Yes.

8 MR. SCHONMAN: The service copies will
9 be courtesy copies electronically, and formal
10 service by mail. And then, filing can be done
11 electronically, according to the rules.

12 MR. JACOBS: And, everything needs to
13 -- that we are exchanging, needs to also be
14 filed into the docket, correct?

15 JUDGE SIPPEL: Electronically, by
16 electronics. Isn't that an electronic docket?

17 MR. SCHONMAN: Well, there was a time
18 when we --

19 JUDGE SIPPEL: I know there was.

20 MR. SCHONMAN: -- filed an original and
21 put six copies to the secretary's office for
22 filing. That filing process can now be done
23 electronically, as I understand it, similar to a
24 notice of comment in a rulemaking proceeding.

25 MR. JACOBS: Well, let me --

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1 MR. SCHONMAN: That's my understanding.

2 JUDGE SIPPEL: -- I don't agree with
3 that.

4 MR. JACOBS: My notice of appearance --

5 JUDGE SIPPEL: Yes.

6 MR. JACOBS: -- I sent it
7 electronically to the judge and the Bureau. I
8 filed it in the electronic system, but there was
9 something which seemed to tell me that I also
10 needed to physically file it in paper with the
11 secretary's office, which I did. And, maybe I
12 didn't need to, but I did.

13 And, that last issue is what I'm
14 talking about. Are we going to have to file
15 everything physically by mail or hand with the
16 secretary's office, in addition to what we are
17 doing electronically?

18 JUDGE SIPPEL: I don't think that's
19 necessary anymore. Now, I'm relying on experts
20 that I have. I'm going to have to find out. I'm
21 not going to take responsibility for that.

22 MR. SCHONMAN: I'm not the expert on
23 anything, but --

24 JUDGE SIPPEL: Become one.

25 MR. SCHONMAN: -- but I do think that

1 the rules provide for electronic filing.

2 JUDGE SIPPEL: Filing, that's correct.

3 MR. SCHONMAN: Which dispenses with the
4 need to physically hand deliver the original plus
5 six copies to the secretary's office. And, I'm
6 looking now at Mary Gosse, who I think is the
7 familiar one with the filing process.

8 I think it's redundant to do physical,
9 hand delivery filing, as well as electronic
10 filing.

11 JUDGE SIPPEL: Well, let's leave it at
12 that, unless something happens to the contrary,
13 unless someone finds out something very factual,
14 let's just leave it at that, okay?

15 Now, as far as I'm concerned, a
16 courtesy copy to me, and to Austin and Mary, can
17 be all email. Now, if you are going to mail a
18 copy of a hard copy, please, to one another, just
19 to make sure it's being done, I don't know, I
20 don't have any reasoning, necessarily, for that,
21 but if you are going to drop a copy in the mail,
22 drop a copy in the mail to us also. But, I'm not
23 going to sit around and wait for it before I do
24 anything, because sometimes it goes out there to
25 Maryland.

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1 MR. JACOBS: In my defense of my
2 quandary, I refer to Paragraph 23 of the hearing
3 designation order, which says that to participate
4 in this hearing, one shall file within 20 days of
5 the mailing of the hearing designation order
6 written appearances in triplicate, stating their
7 respective intentions to appear.

8 Well, I figured that the electronic
9 filing was not going to be in triplicate, so that
10 meant I had to physically file it, and that's
11 what I did. And, maybe that would be the
12 beginning and the end of that.

13 MS. GOSSE: There's a certificate of
14 filing that -- confirmation of filing, that you
15 need to print, and then when you said the paper
16 copy to the parties, attach that. That indicates
17 that it's been filed.

18 MR. JACOBS: Very good. Thank you.

19 MS. GOSSE: And, that's how we know it
20 will get in.

21 MR. JACOBS: Excellent.

22 MR. SCHONMAN: I will say that the
23 notice of appearance requirement in Paragraph 23,
24 references Section 1.221, which talks about
25 filing in writing multiple copies. There may be

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1 a disconnect between some of the rule sections.

2 I think Paragraph 23 accurately quoted
3 1.221, but for the purposes of filing a document
4 with the Commission, as Ms. Gosse has described,
5 can be done electronically with that proof of
6 filing.

7 MR. JACOBS: Excellent.

8 MS. GOSSE: Confirmation of filing.

9 MR. JACOBS: That's fine.

10 MS. GOSSE: Because if it's not
11 accepted, it will tell you that.

12 MR. JACOBS: That sounds like 2014.

13 JUDGE SIPPEL: Oh, golly, this OALJ
14 learned that definitely we are in Century 21. I
15 can't speak for the rest of the Government. Let
16 me broadly say it that way.

17 Okay. We are all set then? This is
18 it. Okay.

19 MR. JACOBS: You'll issue an order, I
20 guess.

21 JUDGE SIPPEL: Yes, I'm going to issue
22 an order.

23 MR. JACOBS: I have not --

24 JUDGE SIPPEL: I'm going to ask you to
25 get these dates -- you know, to come up with some

1 proposed dates, but that doesn't have to be done
2 here.

3 MR. JACOBS: -- I have not yet
4 published the notice of hearing that the rules
5 also require, because I figured without the date
6 of the hearing that was a silly thing to do.

7 JUDGE SIPPEL: Well, do you want to set
8 it now?

9 MR. JACOBS: No. No. I mean, I'm
10 content to wait, but I just wanted to explain why
11 that hadn't been done.

12 JUDGE SIPPEL: Okay. Well, I'm going
13 to have to double check on The Game Show trial
14 dates, because I don't want to start playing with
15 that date. I will make arrangements for that
16 date when I have to, but so far it's a clean
17 date, and I'm trying to plan my big, you know,
18 other things that I have to do around that.

19 So, it's very -- probably by the end
20 of this end you'll know what my calendar looks
21 like, and then you can make your decision.

22 But, I'm hoping it's going to be --
23 April sticks in my mind. I don't want to get
24 into the sequence of Easter and Passover, that
25 type of thing, and if that's the case, I hope

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1 that we can do this in March some time, but we'll
2 find out. Let me check, we'll get back to you.
3 Okay.

4 And then the rest of it is, you know,
5 the issue is going to be, you know, the normal
6 dates, the procedural dates preparing for trial.
7 Once you get the hearing date, then you get back
8 everything up from that, and come up with
9 exchange dates and all that kind of stuff.

10 MR. SCHONMAN: Your Honor, in terms of
11 coming up with dates, do you anticipate that
12 direct testimony would be reduced to writing?

13 JUDGE SIPPEL: Yes.

14 MR. SCHONMAN: Then that would require
15 an admission session.

16 JUDGE SIPPEL: Well, it might. It can
17 all be done at one time, if there's not much
18 there. We don't have to drag people in another
19 day. We can do it just before the hearing. You
20 know, I can start earlier, I can start at 9:00.
21 I'm not going to do what Judge Miller did to
22 solve it, I'm not going to start at 8:00.

23 MR. SCHONMAN: Thank you for that.

24 JUDGE SIPPEL: Are we all set then?

25 MR. SCHONMAN: Yes.

1 JUDGE SIPPEL: Mr. Jacobs?

2 MR. JACOBS: Thank you.

3 JUDGE SIPPEL: So good to see you, sir.

4 MR. JACOBS: Same here.

5 JUDGE SIPPEL: Okay. We are in recess.

6 (Whereupon, the above entitled matter
7 went in recess at 11:13 a.m.)

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Docket No. (if applicable)

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Place of Hearing

June 24, 2014

Date of Hearing

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